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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/055,526	11/13/2001	David M. Kaufman	D2551	9367

27774 7590 11/02/2006

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EXAMINER

SHANG, ANNAN Q

ART UNIT PAPER NUMBER

2623

DATE MAILED: 11/02/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action
Before the Filing of an Appeal Brief**

Application No.

10/055,526

Applicant(s)

KAUFMAN, DAVID M.

Examiner

Annan Q. Shang

Art Unit

2623

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 20 September 2006 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: _____.

Claim(s) objected to: _____.

Claim(s) rejected: _____.

Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.

12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____

13. ☐ Other: _____.


CHRIS KELLEY
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 2600

Continuation of 11. does NOT place the application in condition for allowance because: With respect to claims 1-3, 6-10, 13-16 and 19, applicant states that, "Claims 1, 6-8, 13-15 and 19 stand rejected under 35 U.S.C. 102 stand rejected under 35 U.S.C. 103 as being unpatentable over..." This is an error. As indicated in the last office action claims 1-3, 6-10, 13-16 and 19 stand rejected under 35 U.S.C. 103, as being unpatentable over Pavlic et al (5,130,664) in view of Crane (4,731,614) and not as stated by the in the Applicant's Remarks.

Applicant further states that, "...Examiner's rationale is respectfully misplaced...First, the Examiner appears to disagree with the legal requirements of establish a prima facie case of obviousness set forth by the U.S. Court of Appeal for the FederalExaminer goes on to advance his own test for obviousness...No citations to any precedential authority is support of this test...Examiner may believe his judgment to be superior to that of the courts and the drafters of MPEP (see page labeled 2+ of applicant's Remarks).

In response, Examiner disagrees. Examiner notes applicant's arguments, however, Examiner did not make-up the test for obviousness citation in the office action. As stated in the office action, "...the test for obviousness is not whether the features of a secondary reference may be bodily incorporated into the structure of the primary reference, nor is it that the claimed invention must be expressly suggested in any one or all the references. Rather, the test is what the combined teachings of the references would have suggested to those of ordinary skill in the art..." (see In re Keller, 642 F.2d 413, 208 USPQ 871 (CCPA 1981). Hence the test was not made-up by the Examiner.

Applicant further argues that, "the combination does not disclose all of the claimed limitations.." that "The Combination Is Impermissible Because Crane Is Not Analogous Art" that The rejection is improper for being based on impermissible hindsight" and further discusses the teachings of the prior arts of records and the claimed invention.

In response, Examiner disagrees. Examiner notes applicant arguments, however, it appears the applicant's arguments are directed against the references individually, and one cannot show nonobvious by attacking references individually where the rejections are based on combination of reference (see In re Keller, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); In re Merck & Co., 800 F.2d 1091, 231USPQ 375 (Fed. Cir. 1986). In the 103(a) rejection of the office action, Pavlic teaches a one GHz CATV repeater station with a high pass portion 14a of a diplex filter which permits signal range of 50 MHz to 1 GHz while rejecting signals of 5-30 Mhz and a low pass portion 14b or reverse system that provides or passes frequency range of 5 MHz to 30 MHz (col.3, lines 32-53) and further uses three special ferrite core transformers (col.5, line 15-col.6, line 1+). Pavlic is silent to where the High band directional coupler is stripline or microstrip technology, a deficiency in Pavlic which is disclosed in Crane reference (figs 1-3), which discloses a distribution network of components, such as directional couplers or a receiver/transmitter, which is composed of printed lines, stripline, microstrip, etc., where the directional couplers possess a bandwidth of an octave and also achieves broad bandwidths of GHz frequencies (col.5, lines 3-16 and col.6, lines 20-39). All references are in the same field of endeavor, i.e., a directional coupler or receiver/transmitter for CATV system, as such the combination is proper and would have be within the knowledge of one of ordinary skilled artisan to combine the teaching of Crane into the system of Pavlic to achieve the claimed limitations. Hence the 103(a) rejection of claims 1-3, 6-10, 13-16 and 19, is proper, meet all the claimed limitation and maintained. Furthermore it is not impermissible hindsight, and appropriate motivation was given as discussed in the last office action. The finality of the last office action is proper and maintained.